

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

SECURA INSURANCE COMPANY,  
as subrogee of Carl and Alice Vollmar,  
d/b/a Vollmar Farms, Inc.,

Plaintiff,

v.

Case Number 06-11170-BC  
Honorable Thomas L. Ludington

JOHN DEERE & COMPANY,  
d/b/a John Deere,

Defendant.

/

**ORDER GRANTING DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT**

This matter is before the Court on the defendant's motion for summary judgment under Federal Rule of Civil Procedure 56. The plaintiff's subrogors purchased a used combine "as-is, where-is" after the defendant used the equipment for experimentation and then made repairs. Allegedly, a wiring harness on the combine failed, which resulted in a fire that destroyed the combine. The plaintiff filed a claim for damages in the amount of \$144,490, the amount by which it reimbursed its subrogors. The plaintiff asserts that it may pursue claim in tort against the defendant for negligent repairs; the defendant counters that the plaintiff's claim is barred under Michigan's economic loss doctrine.

Under *Neibarger v. Universal Cooperatives, Inc.*, 486 N.W.2d 512, 536 (Mich. 1992), in Michigan, "[i]f the purchaser's ultimate goal is to acquire a product, the contract should be considered a transaction in goods, even though service is incidentally required." For reasons stated more fully on the record, the Court concludes that the economic loss doctrine applies. Here, the underlying transaction – the plaintiff's subrogors' purchase of a combine for their business – was

commercial in nature. Further, the allocation of risk was amenable to the process of negotiation, available to the plaintiff's subrogors at the time of purchase. *See Quest Diagnostics, Inc. v. MCI Worldcom, Inc.*, 656 N.W.2d 858, 863 (Mich. Ct. App. 2002).

Accordingly, it is **ORDERED** that the defendant's motion for summary judgment [dkt # 12] is **GRANTED**.

It is further **ORDERED** that summary judgment for the defendant is **GRANTED**.

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: October 4, 2006

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 4, 2006.

s/Tracy A. Jacobs  
TRACY A. JACOBS